IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1668 OF 2005

Smt. Janabai Fakkad Pokharkar & Ors ...Petitioners

Versus

Pritpal Singh Buta Singh & Ors. ...Respondents

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Mr. M.B. Kotak, counsel for Petitioners

Mr. S.K. Chincholikar, counsel for Respondent 3.

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CORAM: B. H. MARLAPALLE, J.

DATED: 27TH APRIL, 2005

P. C.:-

1. Heard Mr. Kotak, the learned counsel for the petitioners who are the claimants in Motor Accident Claim Petition No. 222 of 2002 presently pending before the M.A.C.T. at Kalyan. In the said claim petition, an application at Exh.5 was filed for no fault liability compensation under Section 140 of the Motor Vehicles Act,1988 (for short "M.V.Act") and after hearing all the parties concerned, the learned Member was pleased to reject the said application by his order dated 7.10.2004. Hence, this petition.

2. Mr. Kotak, submitted that the impugned order is grossly erroneous and without application of mind to the prima facie evidence placed on record. He

submitted that the cause of death so long it is consequent to an accident, entitles the claimants for the benefit under Section 140 of the M.V. Act. He relied upon the Division Bench decision of this Court in the case of **SatvantKaur Harjitsingh Vig and Ors. Vs. Aarti Jayant Lalwani & Ors. (2005 ACJ 255).** 3. This is a petition filed under Article 227 of the Constitution and interference in the impugned order would be permissible if it is pointed out that the said order is perverse or manifestly erroneous or without authority in law.

4. The vehicle involved in the accident was owned by the original opponent No.1 and was insured by the original opponent No.2 (MH-04-E-4025). The deceased by name Shri. Fakkad Pokharkar met with the motor vehicle accident that took place on 13.4.2000 on the Mumbai Agra Road near village Talawali and sustained injuries in the said accident. He was hospitalised and he died on 30.4.2000 while in his house. The medical certificate brought on record by way of prima facie evidence states that Fakkad Pokharkar died on 30.4.2000 at the residence due to acute Myo cardinal infraction. It was submitted by Mr. Kotak, the learned counsel that the certificate brought on record contains some typing mistakes and the cause of death was not only Myo cardinal infraction but indeed it was cardiogenic shock and it was related/connected

to the injuries which the deceased had sustained in the accident that took place on 13.4.2000. Unfortunately, the certificate does not say so. The Division Bench of this Court in the case of Satvantkaur (supra) interpreted the provisions of Section 140 in the following terms;-

> "On a plain reading, it is clear that the owner of the vehicle becomes liable to pay compensation in respect of a death which has resulted from an accident arising out of the use of a motor vehicle. The phrase 'has resulted from' occurring in the aforesaid section does not require the death to have occurred in the accident itself. The section is attracted even where death is the result or the consequence of an accident arising out of a motor vehicle. Therefore, what is necessary to see whether the death is the consequence of an accident arising out of the use of the motor vehicle."

. In the instant case, there is no prima facie evidence to show that the death occurred on 30.4.2000 was in consequence of the accident that had taken place on 13.4.2000. It is possible for the claimants

to bring the necessary medical evidence during the trial of the main claim and in any case the compensation payable under Section 140 of the M.V. Act is not an independent monetary benefit. Such an amount granted under Section 140 of the M.V. Act is liable to be adjusted from the amount declared to be payable in the main claim petition. If the claimants succeed by adducing the necessary evidence so as to show that the death occurred on 30.4.2000 was in consequence of the accident that had taken place on 13.4.2000, they may succeed in the main claim. However, for the time being, it cannot be said that the view taken by the Tribunal is perverse or patently erroneous.

5. Hence, the petition fails and the same is hereby rejected.

6. However, it is clarified that the main claim petition shall be decided on its own merits and without being influenced by any observations made in the impugned order or in this order.

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